



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,009	06/28/2001	Louis Morrison III	068.0002	3675

7590
Erik B. Cherdak
Arent Fox
1050 Connecticut Avenue
Suite 400
Washington, DC 20036

06/27/2006

EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
----------	--------------

3629

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/895,009		MORRISON ET AL.	
	Examiner		Art Unit	
	Dennis Ruhl		3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3629

Applicant's response of 4/13/06 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8,10, are rejected under 35 U.S.C. 102(e) as being anticipated by McCall et al. (6321984).

For claims 1,2,4,10, McCall discloses a system and method for the distribution of fuel to a customer. McCall discloses that a server facility 204 is used to store fuel deal data in database 206. The data is fuel deal data as claimed because the data in database 206 is data indicative of special prices given to customers on gas when certain incentive criteria have been met (i.e. certain dollar amount purchased over time, certain volume purchased over time or other). The server facility 204 processes the data about a particular customer (purchase history and deal they are eligible for) and automatically generates pricing data (gas price) based on the fuel deal data. The predetermined pricing policy technique is the particular incentive program that is in place at any particular time or is the specific plan tailored to particular customers (member of

Art Unit: 3629

a club that receives an automatic discount). The client facility is the fuel dispenser controller 26. The client facility is coupled to the server facility by an electronic network as claimed, and McCall specifically recognizes and discloses the use of the Internet as a network in column 9, lines 15-20. The client facility allows the user to enter fuel deal data because for each transaction conducted at the pump, the data is saved in the database 206. The transaction data is stored so that it can be determined when the incentive criteria have been met by the customer and the discount can be received. This satisfies what is claimed with respect to the entering of data via the client facility. The intended use recitation of fuel being sold by a fuel distribution system is in McCall. The fuel distribution system (although not positively claimed as part of the scope of the system) is the pump nozzle and associated hardware that actually dispenses the fuel. With respect to the newly added language reciting that the pre-determined pricing technique is "substitutable", this is inherently present in McCall. If the owner of the business decides that they do not want to continue with the current customer incentive program (the pre-determined pricing technique), they can substitute another incentive program (another pre-determined pricing technique) for the current incentive program. The pricing technique of McCall can be substituted with another type of pricing technique, this is inherent.

For claim 3, the Internet is an "open standards based protocol" as claimed.

For claim 5, the server facility processes and generates pricing data periodically. Whenever a customer uses the system for a purchase the server facility is processing and generating pricing data as claimed.

Art Unit: 3629

For claim 6, McCall discusses the identification of a pump number, for example C. McCall discloses more than one fuel dispenser (more than one pump). This satisfies what is claimed because another customer at another pump satisfies what is claimed. The server facility is capable of being accessed by more than one pump controller at one time.

For claim 7, McCall discloses that the server facility and the client facility are remote from each other. See column 3, line 65 to column 4, line 4.

For claim 8, the incentive program looks to prior purchase data and this is the same as past fuel deals (how much did you buy in terms of volume or dollar amount?).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of

Art Unit: 3629

35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Axxis Petroleum and the petroleum price analysis software that they produce and sell.

For claims 1,2,3,6,7,9,10,11,12,13,16,17,19,20, Axxis petroleum is a company that has been making petroleum price analysis software for the industry since 1991 to late 1990's, when some more software was released in 1997. Axxis petroleum is disclosed as *"electronically capturing almost 100,000 prices every day and subjects them to a strict quality assurance procedure, resulting in approximately 25,000 unique prices including gasoline, distillates, aviation fuels, ethanol, and propane"*. Axxis also provides *"the prices at all terminals within a rack city"* and is disclosed as providing a *"comprehensive list of averages in the industry"*. Axxis software provides their customers with petroleum price analysis and the necessary data needed to make informed decisions about the market and about the pricing of petroleum products. With respect to the claimed server facility that stores fuel deal data and processes the data to automatically generate pricing data in accordance with a predetermined pricing policy, the use of a server facility is considered inherent to Axxis petroleum. This is because for Axxis petroleum to electronically capture and process almost 100,000 prices daily, and to then analyze the data with their pricing software, a server (reads on a computer) is necessarily required. You cannot run price analysis software without a server facility as claimed. Axxis uses the Internet to capture data and

Art Unit: 3629

deliver end result data to their customers and this also would require a server facility as claimed. The claimed predetermined pricing technique is the manner in which Axxis goes about analyzing the collected data. The disclosure of *"electronically capturing almost 100,000 prices every day and subjects them to a strict quality assurance procedure, resulting in approximately 25,000 unique prices including gasoline,..."* is a disclosure to a predetermined pricing technique that results in pricing data (any data relating to the price data analysis). With respect to the pricing technique being "substitutable" as recited in claim 1, the pricing technique of Axxis is fully capable of being substituted with another pricing technique if so desired. This is inherent. The client facility is the individual customers and their computers that are electronically coupled to the server facility via the Internet so that data can be collected, analyzed, and disseminated to their customers. This is also considered inherent because if you are receiving electronic data via the Internet, there must be a client facility of some kind that is sending the data to the server facility.

Not disclosed by Axxis is that the predetermined pricing technique results in fuel prices based on weighted averages for fuel prices. Axxis provides *"the prices at all terminals within a rack city"* and is disclosed as providing a *"comprehensive list of averages in the industry"*. The *"list of averages"* is discussed with respect to prices. Axxis takes in past fuel deal data and generates averages for these prices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Axxis and the petroleum price analysis software with the feature of providing "a weighted

Art Unit: 3629

average” of fuel prices as part of the data that the system generates. In view of the fact that it is disclosed that averages are generated for fuel prices, and in view of the fact that “weighted averages” are common in the analysis of prices, one of ordinary skill in the art at the time the invention was made would have found it obvious to produce a weighted average for fuel prices as part of the results of the price analysis software. A weighted average is a useful piece of data one of ordinary skill in the art would want to know about when analyzing petroleum prices. From the teaching of producing averages for fuel prices, producing “weighted averages” would have been obvious to one of ordinary skill in the art.

For claims 4,14, a “data storage facility” is inherent to Axxis. A database is necessarily required to be able to process and store all of the data that Axxis collects and processes.

For claims 5,15, on a daily basis (is periodically) Axxis processes and generates pricing data as claimed.

For claims 8,18, the data that is collected by Axxis is data about “past fuel deals” as claimed. The pricing software uses past fuel deal data in the analysis of petroleum prices.

6. Applicant's arguments filed 4/13/06 have been fully considered but they are not persuasive.

With respect to the newly added limitation of “substitutable”, this has been addressed in the rejection of record. The pricing technique of both McCall and

Art Unit: 3629

Axxis are fully capable of being substituted with another pricing technique if one desired to do so. This is inherent to both references. All that this limitation is claiming is the ability to replace one pricing technique for another, which is present in both the McCall reference and the Axxis reference. The argument is non-persuasive.

With respect to the argument that McCall does not determine prices, the examiner disagrees. If you take a price, apply a discount that depends on the current customer and can change from customer to customer, you are determining a price, namely the discounted price. The argument that McCall does not generate prices is non-persuasive. With respect to the argument that the claims are directed to pricing fuels in transactions between producers, agents, brokers, etc., the examiner takes notice that none of what has been argued is in the claims. The argument is not commensurate with the scope of the claims.

With respect to the argument that Axxis cannot anticipate the "weighted averages" limitation, the examiner agrees. That is why the rejection is a 103 rejection and not a 102 rejection. With respect to the motivation to use weighted averages, the examiner feels that this is addressed in the rejection of record and that more than sufficient motivation is present for one of ordinary skill in the art to conclude that the use of weighted averages is obvious. The argument is non-persuasive.

Art Unit: 3629

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DENNIS RUHL
PRIMARY EXAMINER